(3)

No. 85-318

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
NOV 4 1985
JOSEPH F. SPANIOL, JR.
CLERK

October Term 1984

Mahfouz El Shahawy, M.D.,
Petitioner

v

Larry P. Elliott, M.D.

On sworn Petition for Writ of Certiorari Directed to the United States Court of Appeals for the Eleventh Circuit in Case No. 84-3618, 83-3154 (District Court Case No. 31-545 Civ TWC)

PETITIONERS REPLY AND SUPPLEMENTARY BRIEF

MAHFOUZ EL SHAHAWY, M.D.
1851 Arlington Street
Suite 206
Sarasota, Florida 33579
(813) 366-9800
Petitioner Pro Se

QUESTIONS PRESENTED

I

WHETHER ALL QUESTIONS ONE THROUGH SIX PRESENTED BY PETITIONER IN HIS INITIAL BRIEF AUGUST 16, 1985 IS SUPPORTED BY THE RECORD CONTRARY TO THE MISLEADING BRIEF IN OPPOSITION BY THE RESPONDENT.

II

WHETHER ADDITIONAL NEWLY DISCOVERED EVIDENCE BY AN ADMISSION ON SEPTEMBER 3, 1985 BY DR. GARY COOPER, EXPERT AND STAR WITNESS FOR THE DEFENDANT DR. ELLIOTT AT THE TRIAL LEVEL, AND DEFENDANT IN A CLOSELY RELATED CASE, IS A BADGE OF FRAUD SUFFICIENT TO WARRANT REMAND FOR INVESTIGATION FOR FRAUD ON THE COURT. DR. COOPER WAS A DEFENDANT IN A CLOSELY RELATED CASE.

III

WHETHER THE PER CURRIAM AFFIRMANCE OF THE ELEVENTH CIRCUIT ERRONEOUSLY DECIDED THE ISSUE BEFORE IT OF WHETHER THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA IN AFFIRMING THE CLERK'S TAXATION OF A BILL OF COSTS AGAINST SHAHAWY HAD ANY DISCRETION TO AFFIRM THE BILL OF COSTS WHERE THE RESPONDENT ELLIOTT HAS INCURRED NO LIABILITY FOR COSTS.

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PETITIONER'S REPLY AND AND SUPPLEMENTARY BRIEF

STATEMENT OF THE CASE

Petitioner has stated the case clearly, in his initial brief to the court, petitioner initial brief pages 3-12.

Respondent's brief in opposition attempts to limit the court to only one issue, ie bill of costs. This is not correct since petitioner took his appeal to the 11th Circuit from final judgement of the District Court on August 3, 1984 where the petitioner was denied all the issues he stated in this certiorari petition to the United States Supreme Court, (App. A-D).* This is in contrast to the defendant's counsel's statement in respondents brief page 1, which is incorrect and misleading. Also the order presented in the respondent's app. p. 3 was not the basis for the appeal. This was entered June 12, 1984 prior to the plaintiff's

*Original lodged with the Clerk.

notice of appeal on August 3, 1984 from the order entered on 8/3/84, petitioner App. A . So defendant's counsel's representation to this Court definately was incorrect. Dr. Shahawy does not seek review of an unpublished per curriam affirmation as stated by respondent.

The genesis of the petition to the United States Supreme Court was based on the fact that Dr. Shahawy discovered perjury and fraud on the Court as he reviewed the bill of costs as outlined in his initial brief. This could even be seen clearly on the bill of costs which the respondent's counsel used in his appendix to this Court on pages 4, 4A, 4B, 4C, 4D, and 4E. On these six pages which were supposed to represent the bill of costs, it is clearly evident that <u>there was perjury</u> on the part of the defendant's attorney Mr. Strelec when he signed the bill stating that

the initial amount he asked for, $13,296.75, was incurred on that case by Dr. Elliott. The Clerk of the Court without even all of the detailed knowledge surrounding this case and other related cases, immediately discovered 50% of these charges were not even justified and the bill was cut down to $6,062.85 as can be seen in respondent's App. 4-4E.

Respondent's counsel has asked for and has already paid Dr. Chinoy, who is a non-expert witness, $4625.00 for less than one hour of testimony before the trial court. This outrageous payment was easily picked up by the Clerk of the Court who cut it down to $230.00 as can be seen in the respondent's appendix, (resp. App. 4B). Dr. Chinoy traveled only from Jacksonville Florida to Tampa Florida, which are less than 150 miles apart. Additional witness fees were also paid by the respondent's

counsel to Dr. Chinoy. An item of $300.00 was cut by the Clerk of the Court to $30.00 as can be seen, (Resp. App. 4D). Dr. Chinoy's testimony was definitely not supported by the facts as will be discussed later and as a matter of fact can be construed as perjury and fraud on the Court. Why was Dr. Chinoy paid nearly $5,000.00 for less than one hour of testimony before the court? Was that an incentive for Dr. Chinoy to come and give false testimony before the Court? If the trial judge knew of this, would he consider Dr. Chinoy a credible witness or a paid witness? Furthermore, respondent's appendix page 4C and 4D shows the names of witnesses who have been paid travel expenses who have neither traveled to Tampa nor given testimonies as Mr. W. Hereford,* (Resp. App. P. 4D). Is this not a fraudulent bill of costs? Furthermore, on the same bill of costs the

*And C. Williams and J. Floyd.

respondent's counsel asked for deposition fees for Mrs. Kathy Tyrity in the amount of $202.95 which was asserted as counter claim which was dismissed by the Court and which was never used at the trial; was this justified? Additional details about the inappropriatness of the bill of costs are detailed in the petitioner's initial brief, pages 9-12.

Furthermore, petitioner would like to call to the Court's attention that expense of that deposition and other claimed expenses were incurred not only on the case of Dr. Elliott, but also on related cases in the Federal and State Courts as stated on the petitioner's initial brief, (Shahawy v Cooper Case No. 31-1808 C.A. Alachua County Florida and Shahawy v Harrison et al Case No. 83-3154 11th Circuit, Atlanta Georgia).

The respondent's counsel was fully aware that his client Dr. Elliott did

not pay a penny of the bill of costs. Furthermore, he is also fully aware the payment was made by an insurance company and officials of Sarasota Memorial Hospital, who are currently defendant's in a related case before the Federal Court, as cited above. The insurance company which paid part of Dr. Elliotts costs of legal defense has been reorganized but as that time was under the name of Pimco, and did not insure Dr. Elliott, but did insure other physicians and defendants in the related case cited above. Respondent's counsel's response, (Resp. Brief p. 8), on this matter was misleading. Dr. Elliott was not insured by this insurance company which picked up part of his expenses. This case is distinguished from the case respondent cited, (Resp. Brief p. 8), Dasher v Mutual Life Insurance Company of New York, 78 F.R.D. 142, 145, S.D. Ga. 1978. In

that case the defendant was the insurance company who paid the legitimate travel expense of a witness. See petitioner's petition pages 9-12 for statement of illegal maintenance of Dr. Elliott's defense by the Hospital Board and Pimco Insurance Company. Dr. Elliott incurred no liability for costs. Also, it is very interesting to note the respondent's counsel did not challenge petitioner on the fact that the bill of costs was paid mostly by Sarasota County Hospital Board officials, members of which are currently defendants in the related case, petitioner's initial brief pages 10-12.

From the foregoing it is clearly evident that the respondent's brief is incorrect on this matter and not supported by the record. Dr. Elliott did not incur any of the expenses. Payments were approved unlawfully by officials of Sarasota Memorial Hospital, and the

insurance company PIMCO, which was not insuring Dr. Elliott, but other defendants in still pending related cases.

NEWLY DISCOVERED EVIDENCE

Newly discovered evidence supports petitoner's request to the Supreme Court as clearly outlined in his inial brief. The newly discovered evidence best illustrated by the recent admission of Dr. Gary Cooper who was the only Board certified cardiologist with training in cardiac catheterization, who testified on behalf of Dr. Elliott before the trial court. Dr. Cooper's perjured testimony on behalf of Dr. Elliott was most damaging to Dr. Shahway at the time of trial and petitioner has always maintained the position that this testimony was a fraud on the Court and that was the reason petitioner requested the trial court to withhold any final judgment until related litigations had been completed.

This request was denied by the trial judge as noted in his order of August 3, 1984, petitioner's appendix B. As a matter of fact Dr. Cooper's testimony appeared to have had a great weight on the opinion entered by the Court in it's ruling on December 22, 1982, as can be seen in respondent's appendix page 6C, 6E. An important related litigation to which the petitioner referred was the suit against Dr. Gary Cooper filed in Allachua County florida Case No. 81-1308-CA-01. This case was supposed to go on trial before a jury on September 3, 1985. On that date Dr. Gary Cooper, who was a star witness for Dr. Elliott, finally admitted under oath by notorized statement, that his testimony was based on heresay and offered an apology to the petitioner together with an undisclosed amount of money. Defendant and expert witness Dr. G. Cooper stated in his witnessed

and notarized letter of apology of September 3, 1985 the following:

> "After you filed suit against me, my lawyer and I investigated the circumstances and determined that the events which were the subject of the rumor did not actually happen and that in fact the rumor was not true. Furthermore, we reviewed all the cardiac catheterization cases in which you participated including those cases which I performed under your supervision, and found they did not reveal the occurrence of any mishaps or complications.
>
> I apologize to you for having repeated the false rumor without having first conducted an investigation to verify whether or not it was true. I had expected that Sarasota Memorial Hospital would conduct an appropriate investigation. I regret anyone taking as fact my repetition of the rumor. I retract the statements which I made regarding the rumor and ask that if any judgment or decison concerning you made by Sarasota Memorial Hospital was based on my statements, the appropriate parties should reconsider their judgment and decision. I would certainly agree with you that such important judgments or decisions should not be made on the basis of a rumor." (Petioner's App. E, original lodged with the Clerk).

Interestingly enough the officials of Sarasota Memorial Executive Committee and Board, who are defendants in the case cited above, were not only paying the defense of Dr. Cooper, but even wanted to appear before the Court in his support as noted by the Executive Committee of August 19, 1985, (Pet. App. F., original lodged with the Clerk):

> "The Dr. Shahawy defamation suit against Dr. Cooper was discussed. Motion was made to request the hospital Board to intervene on behalf of Dr. Cooper".

And a special Hospital Board meeting on August 26, 1985:

> "Mr. Lamar Mathews* then reviewed the status of the Shahawy vs. Cooper case. Discussion followed with Dr. Stutz *reporting that the medical staff Executive Committee unanimously passed a resolution recomending to the board to take the act recommended by counsel."(Pet. App. G, original lodged with the Clerk) *Defendants in related case.

Sarasota Memorial Hospital officials wanted to see that Dr. Cooper

also succeed at the lower court level as they did with Dr. Elliott inspite of the obvious injustice done to the petitioner. Dr. Cooper however in spite of their help and finacial support admitted that he testified falsely, as depicted by his letter quoted above. These facts are well known to the respondent's counsel. Dr. Elliott, who is a radiologist and not a cardiologist repeatedly stated before the trial courts in his testimony that most of his knowledge was coming from Dr. Cooper, and it is not fair and honest that his testimony be accorded credence. Now from this newly discovered evidence and admission of Dr. Cooper there should be no doubt that there has been a fraud practiced on the trial court.

ARGUMENT

REASONS FOR GRANTING WRIT

For the reasons cited above

petitioner requests the Court to grant his petition. Dr. Shahawy does not here attempt to review those issues as such in Case No. 84-3618. Dr. Shahawy requested the Court to re-examine awarding the bill of costsfor $6,062.85 to Dr. Elliott, and requested the Court to stay the court proceeding pending decisiion in related suits and the investigation for fraud. It is clear from the aforestated facts that Dr. Shahawy's request was justified. There is no time limit which prevents setting aside any judgment for fraud on the Court. New matter not available at the time Dr. Shahawy filed his petition has been discussed above, via Dr. Cooper's letter.

The admission of defendant's star witness Dr. Gary Cooper on the day of his supposed trial before the jury warrants that this Court in exercise of it's supervisory power over inferior

Federal Courts remand Case No. 83-3514 for ultimate disposition to the trial court of the sericus issue of fraud on the Court raised by the new matter cited above. Any court at any time may set aside the judgment for fraud on the court, usually egregious conduct involving corruption of the judicial process it's self. Honneus v Donovan D.C. Mass 1982, 93 F.R.D. 433. Fraud upon the Court is a special kind of fraud, Dankese Engineering, Inc. v Ionics, Inc. D.C. Mass. 1981, 39 F.R.D. 154.

Refusal to vacate judgement by District Court on motion which asserted that judgment had been obtained by fraudulent testimony that been procurred was not sound legal discretion. Peacock Records, Inc. v Checker Records Inc. C.A. Ill. 1966, 365 F.2d 145. certiorari denied 87 S.Ct. 707, 385 U.S. 1003, 17 L.Ed 2d 542. The illegal maintenance by the Hospital Board and

Pimco of Dr. Elliott's defense which induced his false testimony as expounded in petitioner's petition, and because such inducement of false testimony obstructs the judicial process itself it is grounds for finding fraud on the Court. Courts may at any time set aside judgments for fraud upon the court; "fraud upon the court" such as may warrant relief from judgment embraces only that species of fraud which does, or attempt to defile the Court itself, or is fraud perptuated by officers of court so that the judicial machinery cannot perform in the usual manner in its impartial task of judging cases. Kuperman v Consolidated Research and Mfg. Corp., D.C. N.Y. 1971, 53 F.R.D. 387, affirmed 459 F.2d 1072. See also, Williams v. board of regents of University System of Georgia, D.C. Ga. 1983, 90 F.R.D. 140; Porcelli v Joeseph Schlitz Brewing Co., D.C. Wis.

1978, 78 F.R.D. 499, affirmed 588 F.2d 838; Armour and Co. v Nard, D.C. Iowa 1972 56 F.R.D. G10.

As to the award of costs, Dr. Shahawy's contention is that Dr. Elliott incurred no liability for costs and any use of the word "over reimbursment" did not imply that Dr. Elliott was entiteled to a quantum of reimbursment but intended to convey the meaning that Dr. Elliott was entiteled to no cost, to nothing. The case Dasher v Mutual Life Insurance Co. of N.Y., 78 F.R.D. 142, 145 (S.D. Ga. 1978) was presented as holding the fact the insurance carrier picked up the expense tab did not preclude an award of costs in the prevailing party's behalf. That presentation is misleading, because it did not make clear that the insurance carrier was both party defendant and the prevailing party, and paid the legitimate travel expenses of a witness

and is distinguished from this case therefore. In this instant case, the Sarasota Memorial Hospital Board and Pimco Insurance Company are not parties to this action and induced Dr. Elliott's false testimony by illegally maintaining his defense by paying his legal defense as has been discussed in the initial petition to this Court. Dr. Cooper has now admitted under oath that he testified falsely. Because Dr. Elliott incurred no liability for legal expenses and cost the Court had no discretion to award him cost as discussed in petitioner's initial petition.

Respondent cites Jenkins v State 385 So2d 1356 (Fla. 1980), as precedent that a per curriam affirmation without opinion does not create any conflict with decisions of other circuits because there is no written opinion to generate conflict. Prior to April 1, 1980 a per curriam decision without any

opinion was held subject to review in Florida by certiorari where a conflict is established by the record proper. As of April 1, 1980 the Supreme Court of Florida lacks conflict jurisdiction to review per curriam decisions of the several District Courts of Appeal rendered without opinion where express and direct conflict is lacking. Jenkins Supra. By way of illustration a contrario, the United States Supreme Court will infer conflict of a Court of Appeal with its own view where the opinion of the court of appeals is not explicit in its grounds for judgment which are vague Egan v City of Aurora et al 865 U.S. 514, 5 L Ed. 2d 741, 81 Supreme Court 684.

The Court of Appeal's affirmance per curriam without opinion of the District Court's judgment, also ratified and adopted that judgment. A simple inspection of the record proper, will establish the conflict set forth in

petitioner's petition, a simple task much less burdsome than this Court performed in inferring conflict from a non-explicit, vague opinion in Egan v City of Aurora Supra. Conflict is the single most important reason this Court weighs in exercising its discretion to grant certiorari because of the tendency of judge-made law to become confused by conflict.

Allowing Dr. Elliott to profit from his false testimony by sustaining an award to him of costs for which he never incurred liability is not only a grave departure from established law, but also contrary to equitable principles out of which the Federal law governing granting of costs grew in that this wrongdoer is therby enabled to profit from his wrong doing.

In this case it is clearly evident that paying Dr. Elliott's legal expenses was illegal maintenance as tending

to subvert justice by inducing perjury as alleged in petitioner's petition. Aside from the issue of maintenance, the insurance company Pimco had no business paying Dr. Elliott's legal defense where he was not insured by the company. the Sarasota County Hospital Board found at it's hearing on October 22, 1980 that Dr. Elliott along with Dr. Cooper, (Pet. App. H*), were not believalbe, so they had no business to pay Dr. Elliott's defense. Remarks which were made by this Hospital Board at that time about Dr. Elliott's credibility is discussed in the petitioner's initial petition on pg. 6-8.* The support which was given to Dr. Elliott, unlawfully, was clearly for a personal vendetta. Because petitioner has initiated a legal action against the offical wrongdoing on the related matter.

*Also in petitioner's App. H, original lodged with the clerk.

CONCLUSION

Respondent's brief in opposition was not only crafted to confuse the issues before the court, but also was unresponsive to nearly all of the related issues raised by the petitioner in his initial petition. The record is replete with facts to support all the questions raised by petitioner in his initial brief, and now is supported by the admission of the defendant's expert witness that he testified falsely.

The coupling of Dr. Cooper's admission under oath of his false tesimony with the illegal maintenance of both Dr. Cooper's and Dr. Elliott's defense is a sufficient badge of fraud to warrant further investigation by the Court and this Court may wish to remand this case for investigation of fraud on the court.

wherefore petitioner respectfully prays this Honorable Court to correct

the above mentioned grave departures from the course of judicial conduct. There has been here "a pollution" of the judicial process. This is of sufficient public importance to warrent setting aside the judgment, and this Court may wish to remand this case for investigation of fraud on the Court. For the above reasons petitioner prays that a Writ of Certiorari be granted.

Respectfully submitted,

M. El Shahawy M.D.

MAHFOUZ EL SHAHAWY, M.D.
Petitioner pro se
1851 Arlington St. Suite 206
(813) 366-9800

STATE OF FLORIDA
COUNTY OF SARASOTA

SWORN AND SUBSCRIBED TO ME THIS 30th DAY OF OCTOBER 1985, AND BEFORE ME PERSONALLY APPEARED MAHFOUZ EL SHAHAWY, M.D. TO ME WELL KNOWN AND KNOWN TO ME TO BE THE PERSON WHO EXECUTED THIS DOCUMENT.

NOTARY PUBLIC Beryl E Adams

My Commission Expires: 2/13/86

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition was furnished by mail to defendant Dr. Larry Elliott and his counsel Mr. G. Hunter Gibbons Esq. and Clare L. Hamner Esq. P.O. Box 3979 Sarsota, Florida 33578; Charles Johnson M.D., Chairman Sarasota County Public Hospital Board, Sarasota Memorial Hospital, 1700 S. Tamiami Trail, Sarasota, Florida 33579; Department of Justice, Washington D.C.; and Mr. Philip Beauchamp, Administrator, Sarasota Memorial Hospital, 1700 S. Tamiami Trail, Sarasota, Florida 33579, this 30th day of October 1985.

M. El Shahawy, M.D.

M. EL SHAHAWY, M.D., Petitioner pro se
1851 Arlington Street, Suite 206
Sarasota, Florida 33579
(813) 366-9800

STATE OF FLORIDA
COUNTY OF SARASOTA

SWORN AND SUBSCRIBED TO ME THIS 30TH DAY OF OCTOBER 1985, AND BEFORE ME PERSONALLY APPEARED MAHFOUZ EL SHAHAWY, M.D., TO ME WELL KNOWN AND KNOWN TO ME TO BE THE PERSON WHO EXECUTED THIS DOCUMENT.

NOTARY PUBLIC Beryl E Adams

My Commission Expires: 2/13/86

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MAHFOUZ EL SHAHAWY, M.D.,

Plaintiff,

vs. Case No. 81-545-Civ-T-

LARRY P. ELLIOTT, M.D.,

Defendant.

O R D E R

The Court has for consideration several motions filed by Plaintiff. Upon review, it is

ORDERED:

1. Plaintiff's Motion for Relief from Clerk's Taxation of Costs and Court's Order of June 12, 1984 is denied.

2. Plaintiff's Motion to Review Clerk's Taxation of Costs is denied.

3. The motion of the law firm of Bailey & Dawes, P.A., to withdraw as counsel for Plaintiff is granted, and the law firm of Bailey & Dawes, P.A. is relieved of further responsibility in this action.

4. Plaintiff's Motion to Strike Defendant's Memorandum is denied.

APPENDIX A (cont'd)

5. Plaintiff's Request that the Court stay any further ruling in this matter until related litigations have been resolved is denied.

DONE AND ORDERED at Tampa, Florida this 3rd day of August, 1984.

WILLIAM J. CASTAGNA
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MAHFOUZ EL SHAHAWY, M.D.,
Plaintiff,

VS.

Case No. 81-545-Civ-T-WC

LARRY P. ELLIOTT, M.D.,
Defendant.

NOTICE OF APPEAL

Notice is hereby given that Mahfouz El Shahawy M.D., plaintiff above named, hereby appeals to the United States Court of Appeals for the 11th Circuit (from the final judgment) (from the order (describing it)) entered in this action on the 3rd day of August, 1984.

Mahfouz El Shahawy M.D.,
Plaintiff
1851 Arlington Street
Suite 206
Sarasota, Fla. 33579

August 31, 1984

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
11TH CIRCUIT OFFICE OF THE CLERK
56 FORSYTH STREET N. W.
ATLANTA, GEORGIA 30303

MAHFOUZ EL SHAHAWY, M.D.,
etc., et al.,

Plaintiffs/Appellants

vs

CASE NO. 84-3618

LARRY P. ELLIOTT, M.D.,

Defendant/Appellee

/

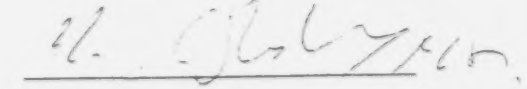
MOTION TO VACATE CLERK'S TAXATION OF COSTS OF JUNE 1984 AND TO REMAND THE CASE TO THE DISTRICT COURT FOR A NEW TRIAL, BY JURY, BASED ON NEWLY DISCOVERED EVIDENCE OF FRAUD AND CONSPIRACY, OR, ALTERNATIVELY, TO STAY THE CASE HEREIN, PENDING COMPLETION OF INVESTIGATION BY FEDERAL BUREAU OF INVESTIGATION AND OF RELATED LITIGATIONS IN FEDERAL AND STATE COURTS

The Plaintiff/Appellant submits to the Court that he himself, in preparing the APPELLANT'S BRIEF which is enclosed herewith discovered evidence of fraud and conspiracy. This fraud involves abuse of use of public funds of Sarasota County which are allocated primarily for public health care. There is also evidence of possible conspiracy among Defendant Dr. Larry Elliott, officials of the Sarasota County Public Health Board, and possible third or fourth party or parties.

Accordingly, Plaintiff prays the Honorable Court vacate the District Court Clerk's taxation of costs of June 1984 and remand the whole case to the District Court for a new trial before a jury, based on the most recently discovered evidence of fraud and possible conspiracy.

Alternatively, the Plaintiff requests a stay in this case until ongoing investigations by the Federal Bureau of Investigation and state and local authorities, and related litigations, have been completed.

M. EL SHAHAWY, M.D., F.A.C.C., P.A.



1851 Arlington Street
Sarasota, Florida 33579
(813) 366-9800

Plaintiff/Appellant

APPENDIX C (con't)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing motion has been served by mail on each of the following, this 11th day of January, 1985:

Frank E. Strelec, Esquire
and Clare L. Hamner, Esquire
Post Office Box 3979
Sarasota, Florida 33578

Chairman, Sarasota County Hospital Board
Sarasota Memorial Hospital
1901 Arlington Street
Sarasota, Florida 33579

Administrator, Sarasota Memorial Hospital
1901 Arlington Street
Sarasota, Florida 33579

Federal Bureau of Investigation

Department of Justice
Washington, D. C.

Chairman, Committee of Ethics
State of Florida
Post Office Box 6
Tallahassee, Florida 32302

Frank Schaub, Esquire
State Attorney
2002 Ringling Boulevard
Sarasota, Florida 33577

Florida Department of Law Enforcement
Tallahassee, Florida

M. EL SHAHAWY, M.D., F.A.C.C., P.A.

By _____

Plaintiff/Appellant

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
11TH CIRCUIT OFFICE OF THE CLERK
56 FORSYTH STREET N. W.
ATLANTA, GEORGIA 30303

MAHFOUZ EL SHAHAWY, M.D.
ect., et al.,
Plaintiffs/Appellants

vs.

CASE NO. 84-3618
D.C. No. 81-545-CVC-T-15

LARRY P. ELLIOTT, M.D.
Defendant/Appellee

/

MOTION TO STAY ISSUANCE OF MANDATE PENDING
APPLICATION TO SUPREME COURT FOR WRIT OF CERTIORARI

Pursuant to the provisions of section 210 (f), Title 28, United States Code, and Rule 41(b) of the Federal Rules of Appellate Procedure, Mahfouz El Shahawy M.D., the above named appellant, respectfully moves the Court to enter an order staying issuance of the mandate in the above entitled appeal.

The reason for this motion is that it is the bona fide intent of the above-named appellant to make proprer and timely application to the Supreme Court of the United States for a writ of certiorari.

The petition for a writ of certiorari will be substantially based on the following grounds:

1. This Court overlooked, or misapprehended the fact that the defendant Dr. Elliott did not pay any of the bill of costs, but rather a third party, "Sarasota Memorial Hospital Board", which is currently involved in related litigations in this Court. Sarasota Memorial Public Hosptial Board abused the power of office and unlawfully paid the expenses of defendant Dr. Elliott in violation of Hospital, State and Federal laws.

2. This Court overlooked, or misapprehended the fact that defendants attorney Mr. Strelec committed perjury by signing incorrect bill of costs. Furthermore, he presented the Court with perjured testimony by numerous witnesses.

3. This Court overlooked, or misapprheneded the fact that the bill of costs submitted was not soley incurred in this case. This Court overlooked or misapprehended the fact that the District Court erred in denying plaintiff's motion to stay ruling until related litigations have been resolved.

4. The District Court erred in finding Dr. Elliott's remarks qualifiedly privileged, that Elliott's remarks were not uttered maliciously, excluding evidence for damage of Shahawy's reputation.

5. This court overlooked, or misapprehended the fact of the newly discovered evidence to support the link of a

APPENDIX D (con't)

conspiracy between defendant Dr. Larry Elliott and Sarasota County Public Hospital Board, which was directly or indirectly responsible for denial of plaintiff's privileges at Sarasota County Public Hospital Board, which is in violation of Federal Anti-Trust Laws, Civil Rights Act, The Racketeer Influenced and Corrupt Organization Act, and Florida Statutes and Common Law.

6. This Court overlooked important facts and failed to remand for a new trial before a jury based on new discoveries and fraud of Sarasota County Public Hospital funds by defendant Larry Elliott.

Wherefore, the above named appellant respectfully moves the Court for an order staying the issuance of the mandate herein pending the filing by appellant of a petition for writ of certiorari in the Supreme Court of the United States, and until final disposition therein of the above-entitled appeal.
Dated May 24, 1985

Mahfouz El Shahawy, M.D., pro se
1851 Arlington St. Suite 206
Sarasota, Fl. 33579 (813) 366-9800

Certificate

I Mahfouz El Shahawy, M.D., appellant, hereby certify that the foregoing motion to stay issuance of mandate is, and application to the Supreme Court of the United States for a writ of certiorari will be, presented in good faith. Such application will not be frivolous nor filed merely for delay.

Mahfouz El Shahawy, M.D., pro se
1851 Arlington St. Suite 206
Sarasota, Fl. 33579 (813) 366-9800

I HEREBY CERTIFY that a true copy of the above has been furnished to the following this 24 day of May 1985.

1. Frank E. Strelec and Clare L. Hamner, Esq., P.O. Box 3979, Sarasota, Fl. 33578
2. Mr. Phillip Beauchamp, Administrator, Sarasota Memorial Hospital, 1700 Tamiami Trail, Sarasota, Fl. 33579
3. Dr. Charles Johnson, Chairman, Sarasota County Public Hospital Board, Sarasota Memorial Hospital, 1700 Tamiami Trail, Sarasota, Fl. 33579

Mahfouz El shahawy, M.D.
Plaintiff

APPENDIX E

Diplomates
American Board of Internal Medicine
American Board of Cardiovascular Disease

Cardiology Associates of Gainesville

Gary R. Cooper, M.D., F.A.C.C.
Michael C. Dillon, M.D., F.A.C.C.
Burton V. Silverstein, M.D., F.A.C.C.

G. COOPER AND ASSOCIATES, P.A.

Dr. Mahfouz El Shahawy
1851 Arlington Street
Sarasota, FL 33579

RE: Shahawy v. Cooper

Dear Dr. Shahawy:

When I was contacted by Sarasota Memorial Hospital about your qualifications and the alleged events which occurred at Shands Teaching Hospital during 1973 and 1974, when I was a Fellow in training under your supervision while you were Director of the Cardiac Catheterization Laboratory, I repeated to Sarasota Memorial Hospital a rumor which I had heard. I do not recall from whom I heard the rumor. The rumor concerned alleged complications which supposedly occurred while I was away at a meeting in Colorado. As you know, I was not present when the alleged complications supposedly happened, and I do not know the complications to have actually occurred. When I repeated what I had heard, I said that it was a rumor and suggested that it be investigated. After you filed suit against me, my lawyer and I investigated the circumstances and determined that the events which were the subject of the rumor did not actually happen and that in fact the rumor was not true. Furthermore, we reviewed all the Cardiac Catheterization cases in which you participated including those cases which I performed under your supervision, and found they did not reveal the occurrence of any mishaps or complications.

I apologize to you for having repeated the false rumor without having first conducted an investigation to verify whether or not it was true. I had expected that Sarasota Memorial Hospital would conduct an appropriate investigation. I regret anyone taking as fact my repetition of the rumor. I retract the statements which I made regarding the rumor and ask that if any judgment or decision concerning you made by Sarasota Memorial Hospital was based on my statements, the appropriate parties should reconsider their judgment or decision. I would certainly agree with you that such important judgments or decisions should not be made on the basis of a rumor.

I do not, and never have, felt any malice or ill will towards you. Again, I regret if anyone took as true the information which I passed on and which has ultimately been revealed to be a false rumor.

Sincerely,

Gary R. Cooper

Dr. Gary R. Cooper

Subscribed and sworn to before me this 3rd day of September, 1985.

NOTARY PUBLIC, State of Florida at Large

Notary Public, State of Florida at Large
My Commission Expires: My commission expires April 21, 1986
Bonded thru Lawyers Surety Corp.

Phone 904-376-1612 [illegible] Gainesville, Florida 32601

APPENDIX F

Members present		Excused	Also Present
Dr. D. Stutz	Dr. H. Youngs	Dr. S. Braunstein	Dr. C. Mathews, Dir.Staff Affairs
Dr. R. Sarkis	Dr. J. Reeder	Dr. H. Kutman	Dr. E. Houck, Administratin
Dr. W. Belmont	Dr. H. Gerry		Ms. M. Walmsley, Administration
Dr. K. Gordon	Dr. P. Leichter	Absent	Dr. R. Tucker
Dr. R. Morse	Dr. C. Pflug	Dr. I. Soussou	Rebecca Vocke
Dr. M. Salem	Dr. J. Slocum	Dr. R. Weltzner	Dr. R. Windom
Dr. J. R. Spencer	Dr. J. Steele		Dr. K. Kiehl (for Dr. Fleegler)

TOPIC	DISCUSSION	ACTION
Call to Order:	The meeting was called to order at 6:35 p.m. by Chief of Staff David R. Stutz, M.D.	
Minutes:	The minutes of the meeting of July 15, 1985 were approved as distributed.	M-S-P approval.
President's Report:	The President's report was given by Vice President M. Walmsley. She reported that patient days were down slightly from this time last year. Cape Surgery Center is doing well. The Cath Lab is up and running again. The Hospital Board is having an extra meeting August 26, to discuss the ElShahawy vs. Cooper suit. Dr. Houck reported a signed joint venture between the hospital and as yet un-named parties for the OP CT project. The Hospital reviewed proposals from 6 Home Health Facilities, and are looking into acquiring Florida Home Health Services. The State recently disapproved a CON for a 100 bed osteopathic hospital. There are hearings being held currently regarding this issue. The physician need analysis has been completed by Tribrook, and there are 5 copies of the Tribrook Report available in the Medical Staff Office for review by physicians. Dr. Stutz interjected his encouragement of the Staff reading this material and writing their feelings regarding this report so that he will be able to report the Staff feelings to the Hospital Board. The Staff office will accept these comments for Dr. Stutz.	Accepted for Inform.
Legal Matters:	The Dr. Shahawy defamation suit against Dr. Cooper was discussed. Motion was made to request the Hospital Board to intervene on behalf of Dr. Cooper.	M-S-P vote of support passed unanimously.

APPENDIX G

PRESENT:	Charles A. Johnson, M.D., Chairman Mr. David Bowman Ms. Lori Brand-Stall Mr. Charles Baumann Ms. Barbara Shoaff Ms. Virginia Balk Mrs. Marian Baylis Mr. I. J. Rand Harry O. Specht, M.D.
ALSO PRESENT:	Mr. Philip K. Beauchamp, F.A.C.H.A., President W. T. Harrison, Jr., Esq., Hospital Counsel Lamar Mathews, Esq., Hospital Counsel Mr. Dale Beachey, Vice President/Finance Mr. Steven Berling, Vice President Edward W. Houck, Ph.D., Vice President/Planning and Marketing David Stutz, M.D., Chief of Staff Charles R. Mathews, M.D., Director for Medical Staff Affairs Ms. Rebecca Vocke, Assistant Director of Nursing Mr. Ernest Smith, Ernest Smith Insurance Mr. David Martin, Herald Tribune
CALL TO ORDER:	The meeting was called to order at 12:30 P.M. by the Chairman, Charles A. Johnson, M.D., who stated the purpose of the meeting was to determine whether the hospital board should intervene for a limited purpose in the case of Shahawy vs. Cooper.
COUNSEL REVIEWS SHAHAWY CASES	Mr. Harrison then gave a broad overview of the history of the Shahawy lawsuits. Mr. Lamar Mathews then reviewed the status of the Shahawy vs. Cooper case. Discussion followed with Dr. Stutz reporting that the medical staff Executive Committee unanimously passed a resolution recommending to the board to take the action recommended by counsel.
MOTION TO INTERVENE ON A LIMITED BASIS IN COOPER CASE	Ms. Brand-Stall then made a motion that the hospital board intervene in the case of Shahawy vs. Cooper for the limited purpose of asserting the confidentiality of peer review records and proceedings. Mr. Baumann seconded the motion. Discussion followed on the motion and was unanimously approved when vote was taken.
ADJOURNMENT	There being no further business to come before the meeting, it was adjourned at 12:45 P.M.

Minutes of Special Board Meeting Of Sarasota County
Public Hospital Board, August 25, 1985

APPENDIX H

QUOTATIONS FROM SARASOTA COUNTY PUBLIC HOSPITAL BOARD MEETING ON 10/22/80

Excerpts of the Sarasota County Public Hospital Board member's discussion during their deliberation at the end of the hearing on October 21, 22, 1980, as evidenced in the official court reporters transcript at the end of the hearing. Here what they said about Dr.'s Cooper, (a resident in training at U. F.), and Elliott, (a radiologist in training at U. F.); both testified against Dr. Shahawy as contrasted with the testimonies of Dr. C. Curry, (Professor of Cardiology at U. F.), and Dr. Daicoff, (Professor and Chairman of the Cardiac Surgery Program at U. F.), both of whom testified on behalf of Dr. Shahawy.

Hospital Board member Mr. Rand:

> I realize that Dr. Curry's testimony and Dr. Daicoff's testimony I was very much impressed with their professional atmosphere than I was with the other folk (page 240)

Hospital Board member Mrs. Balis:

> Dr. Curry and Dr. Daicoff- they all said he was compatent and adequate, and that's what I have to go on (page 242)

Hospital Board Member Mr. Hereford:

> I think that Dr. El Shahawy was treated very shabbily in this whole thing... (page 248)
> I thought Dr. Cooper and Elliott were beauts (page 248)
> ...They wrote letters, I think their testimony was a classic exhibition of the value of the hearsay rule. Both exhibited obvious bias against Dr. Shahawy. I think Elliott is a blow-hard, political type of college faculty member, he was Shahawy's rival.... He was Shahawy's rival at the University

of Florida. He rose from the ranks stepping on his head, if that be the case. He had personal --he utilized whatever he did for personal gain as far as I'm concerned. And I think Cooper was an insidious smart alleck, and he had personal gain because he got the status of replacing Dr. Shahawy as the head of the Adult Catheterization while he was still a fellow in training. So he got some personal gain there, and I bet you he's exploited that from there on. I don't think either one of them are credible witnesses. I think their testimony was impeached very nicely tonight by a couple of witnesses that showed a great deal of credibility. (page 249)

Hospital Board Member Baylis:

I think personalies are in it more than qualifications. That's the thing that botners me the most ---I know you try and separate it, but it's in there (page 254)

Hospital Board member Mr. Tolerton:

No one will deny that Dr. Shahawy is qualified to do the procedure (page 256)

Hospital Board member Greenwald:

I just said I wanted to deny this six months (page 257)

Hospital Board member Dr. W. Chapman:

As for the testimony of Dr. Cooper and Dr. Elliott I wasn't too impressed with it (pge 236)

After the Board hearing Dr. Shahway filed this suit against Dr.'s Cooper and Elliott's alleged false testimonies. Furthermore, Dr. Shahawy obtained his records of cardiac catheterization from the University of Florida during the discovery of this suit, which confirmed his position that Dr.s Cooper and Elliott's testimonies were wrong and motivated with malice; and that cardiac catheterizations were performed with expertise and without complications.